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September 22, 1999

**HAND DELIVERED**

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445 Twelfth Street, S.W.  
Room TW-A325  
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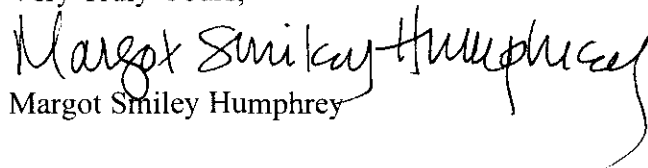
Re: CC Docket No. 99-249

Dear Ms. Salas:

Transmitted herewith, on behalf of the Rural Telephone Coalition (RTC) are an original, a diskette copy, and four hard copies of its comments on Low-Volume Long-Distance Users, CC Docket No. 99-249. A diskette copy and a hard copy of the comments are also being taken to the Commission's contractor, ITS.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

  
Margot Smiley Humphrey

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter )  
 ) CC Docket No. 99-249  
Low-Volume Long-Distance Users )  
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The Rural Telephone Coalition (RTC) hereby submits these comments in response to the FCC’s July 20, 1999 Notice of Inquiry concerning flat-rated charges to low-volume toll users.<sup>1</sup> The RTC is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). The three associations’ members include more than 850 primarily small and rural incumbent local exchange carriers (ILECs). All are “rural telephone companies” as defined in the Telecommunications Act of 1996 (1996 Act, the Act).<sup>2</sup>

The NOI raises a number of questions about the impact on customers that make few or no long distance telephone calls of certain interexchange carrier (IXC) flat charges and cost recovery for various procompetitive requirements imposed by the Commission. The RTC confines its brief

<sup>2</sup> 47 U.S.C. §153(47).

comments to the impacts and implications of the issues the Commission is exploring here for rural customers and the statutory universal service purposes and consumer protections.

The RTC urges the Commission to prevent the use of flat charges by IXC's to undermine the nationwide and urban-rural rate averaging and "reasonably comparable" rural and urban rates and services required under subsections 254(b) and (g), added to the Communications Act by the 1996 Act. Flat charges for interexchange service in rural areas – including "passed through" PICCs – must be uniform in rural and urban areas and throughout the nation. Beyond the need for carrier-wide averaging, the Commission should not rely on low-volume toll customers' ability to avoid flat charges in rural areas. Rural customers often cannot obtain relief, as can urban customers, by dialing around their presubscribed carrier or not choosing a presubscribed carrier because competing IXC's have not chosen to serve their areas. To maintain the benefits of averaging, the Commission should also require IXC's to pass through rate reductions made possible by access charge reductions to all customer classes and locations and enforce the requirement for nationwide optional calling plan offerings.

The Commission should also refrain from shifting IXC-caused costs onto end users by making local carriers collect the PICC as, in effect, an additional SLC. Thus far the Commission has not even imposed PICCs in rate of return-regulated companies' areas.

The Commission should not target relief to low-volume customers under the misapprehension that low-volume customers are low-income customers. If relief is necessary to prevent flat charges from undermining universally affordable toll service, support should benefit low-income users regardless of their long distance calling volumes.

Nor should the Commission stand by while at least one carrier is using the threat of withdrawing as an intrastate and interstate rural toll carrier to compel unlawful intrastate toll rate deaveraging. The Commission should not forget its duty under Section 214(a) not to allow interstate toll providers to cease or impair service without obtaining public interest certification, owing to the need to maintain universally available interexchange service.

## **II. THE COMMISSION MUST NOT ALLOW IXC'S TO UNDERMINE GEOGRAPHIC TOLL RATE AVERAGING BY MANIPULATING THEIR RATE STRUCTURES**

Section 254(g) of the 1996 Act requires each interexchange carrier to charge rates to subscribers in rural and high cost areas that are “no higher than the rates charged by each such provider to its subscribers in urban areas” and to charge interstate long distance rates to its subscribers in each state that are “no higher than the rates charged to its subscribers in any other State.” Accordingly, any flat rate that an IXC imposes on any of its customers for interexchange service – whether it is a PICC pass through,<sup>3</sup> a minimum monthly charge, or any other charge that recovers the IXC’s costs for providing interexchange service – must be uniform in the carrier’s rural and urban areas and from state to state. Moreover, the Commission cannot rely on a low-volume customer’s ability to avoid paying a flat rate to recover certain costs from low-volume subscribers (para. 16). In rural areas customers often cannot avoid such charges by using dial-around, non-presubscribed calling because other IXCs do not serve the market. Customers in rural, high cost

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<sup>3</sup> In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers, First Report & Order, CC Docket No. 96-262, FCC 97-158, 12 FCC Rcd 15982, para. 97 (1997) (Access Charge Reform) (“We find that establishing a broad exception to Section 254(g) to permit IXCs to pass through flat-rated charges on a deaveraged basis may create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas”).

areas that competing carriers do not choose to serve are the group most likely to lack “dial-around” capability, and therefore the only group that would have to pay, in effect, an IXC-created low volume PICC or uncapped second subscriber line charge for the bare availability of a presubscribed IXC.

To be consistent with the Act’s geographic toll rate averaging requirement, moreover, the Commission should require IXCs to pass through any decreases in their access charges to customers on a uniform basis, so that all types of customers for all services in all areas benefit from reductions. To ensure that benefits are not passed through in a way that disadvantages rural areas, for example, the Commission should monitor the industry to ensure that IXCs are making their Optional Calling Plans and contract pricing available in rural markets, as it continued to require when it forbore, to a narrowly defined extent, from enforcement of Section 254(g)’s geographic toll rate averaging mandate.<sup>4</sup>

Competition alone will not be sufficient to ensure that rural customers pay only geographically averaged rates and charges, as long as access costs and charges in rural areas are well above urban access charges. The solution is not to allow IXCs to shift costs to customers in rural, high cost markets, since Congress clearly intended geographic rate averaging for these customers. Consequently, the Commission needs to provide for federal access cost recovery and support mechanisms that facilitate rate averaging by IXCs, including the averaging of any flat charges

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<sup>4</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, 11 FCC Rcd 9564, paras. 27-28 (1996):

As with current policy, we will require carriers to offer the same basic service package to all customers in their service areas, and permit carriers to offer contract tariffs, Tariff 12 offerings, and optional calling plans provided they are available to all similarly situated customers, regardless of their geographic location.

imposed on their customers. Dealing with access charge disparities would enable the Commission to follow the Act's deregulatory preference and avoid direct regulation of any and all IXC flat and usage sensitive rates associated with providing or making available long distance services.

### **III. REQUIRING LECS TO BILL THE PICC DIRECTLY TO END USERS WOULD IMPROPERLY SHIFT IXCs' COSTS TO LOCAL SUBSCRIBERS**

In its effort to shield low-volume long distance users from flat-rated charges that may be disproportionate to usage, the Commission asks whether LECs should be required to bill the residential PICC directly to the end user, rather than bill it to the IXC.<sup>5</sup> This proposal, not surprisingly, originates from the IXCs<sup>6</sup> and demonstrates their unwillingness to acknowledge that they impose definite costs on ILECs' networks. The flat-rated PICC was adopted by the Commission to recover some of these non-traffic sensitive common line costs in a manner more in line with cost-causation principles.<sup>7</sup> It would be antithetical to these principles of cost-causation, the very basis of the Commission's access charge reform, to require LECs to bill the residential PICC to their end users, as it would shift the cost from the cost-causer, the IXC, to the local ratepayer. Furthermore, the Commission has yet to adopt any significant access rate structure modifications, such as the PICC, for small, rate of return-regulated (RoR) ILECs. It would therefore be a double inequity to require RoR ILECs to impose this charge on their local subscribers which they are not even imposing on IXCs.

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<sup>5</sup> Low-Volume Long-Distance Users, Notice of Inquiry, CC Docket No. 99-249, FCC 99-168, (rel. Jul. 20, 1999), para. 18. (NOI)

<sup>6</sup> Id., footnote 26.

<sup>7</sup> See, for example, Access Charge Reform, 12 FCC Rcd. at 15998, 16000, paras. 35, 40.

As nondominant carriers, IXC's have been given a choice in how to bill their customers, so long as they do not deaverage their rates, including PICC pass throughs.<sup>8</sup> There is nothing requiring them to recover the PICC through a flat-rated charge. The Commission must resist the temptation to force LECs and their customers to bear the brunt of customer dissatisfaction with the IXC's' billing choices.

#### **IV. LOW-INCOME CONSUMERS, INCLUDING THOSE THAT ARE LOW-VOLUME TOLL USERS, SHOULD HAVE ACCESS TO AFFORDABLE INTEREXCHANGE SERVICE**

The RTC is not aware of any correlation that exists between income and long distance usage. While it is reasonable to assume that there is a subset of low-volume long distance users who also happen to be low-income, a lower than average level of long distance usage is not necessarily a function of customers' economic status. There are people of all income levels who, because most of the calls they wish to make fall within their local calling area, make few long distance calls.

Sec. 254(b)(3) of the 1996 Act requires that consumers in all regions of the nation, including low-income consumers and those in rural areas, have access to interexchange services at rates that are similar to those charged in urban areas. In addition, Sec. 254(b)(1) requires that services be available at just, reasonable, and affordable rates. However, nowhere in the seven universal service principles enumerated in Sec. 254(b) does Congress single out low-volume toll users for special consideration, and there is no indication that long distance rates for low-volume customers, taken as a whole, are unaffordable. Therefore, the RTC recommends at this time that the Commission refrain

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<sup>8</sup> See note 3, supra.

from diverting limited universal service resources from supporting low-volume long distance users generally, to supporting low-income, low-volume users.

If further analysis should disclose that flat charges for low-volume long distance users are an obstacle to public switched network subscription for low-income consumers that lack flat-rate-free alternatives, the Commission may wish to investigate the need for a program that ensures that these consumers have access to affordable interexchange service. As the Commission has noted, some IXCs already exempt low-income consumers from certain flat-rated charges or monthly minimum charges.<sup>9</sup> In addition, there seems to be an increasing number of dial-around services with “favorable” per-minute rates that do not include flat-rated, non-usage-sensitive charges.<sup>10</sup> The Commission may find that the availability of these market-driven options are adequate, making further FCC involvement unnecessary. If, however, the Commission were to find regulatory intervention necessary, the RTC would support a mechanism to compensate IXCs for waiving the PICC, USF charge and any monthly minimum charge and making reasonable usage rates available to those customers eligible for the Lifeline program. Such a requirement, if deemed necessary, should be sufficient to ensure that low-income consumers, including low-volume customers, have access to affordable interexchange service. The development of this, or any other universal service program or requirement should be done in consultation with the Universal Service Joint Board, as Sec. 254(b)(7) mandates.

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<sup>8</sup> NOI, para. 23.

<sup>9</sup> Id., para. 16.



**V. RURAL SINGLE LINE AND RESIDENTIAL CUSTOMERS NEED COMMISSION ENFORCEMENT OF THE SECTION 214 (a) CARRIER OF LAST RESORT SAFEGUARDS**

In this NOI the Commission expresses its concern about the impact of certain flat-rated charges on single-line residential and business customers. The Commission's goal is to examine the effects of regulatory reform on the end-user. It is worth noting that not only are low-volume users experiencing higher flat charges on their long-distance bills, as the Commission recognizes, at least one long-distance carrier is also refusing to provide service to users in rural areas.<sup>11</sup> In either case, consumers are left with no choice of long distance providers as a result of IXCs deaveraging toll services. The Commission should send a clear message to the long-distance carriers that this action is contrary to the goals of the Telecommunications Act of 1996 and violates Commission policy and rules.

On July 1, 1999, AT&T sent a letter to small telephone companies in rural Missouri. AT&T requested that the small and rural telephone companies "refrain from taking any intraLATA 1+ orders for AT&T from [their] local customers."<sup>12</sup> AT&T also declined to be included on any ballot, notice or list as a carrier available for selection as an intraLATA and/or interLATA 1+ service provider. When this letter was sent, AT&T was arguing for toll rate deaveraging in front of the Missouri Public Service Commission, contrary to the requirement of Section 254(g) with respect to rural and urban toll rates. AT&T concluded its letter to the small and rural telephone companies with a statement that it would be available to serve the market, "contingent upon regulatory approval

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<sup>10</sup> See July 1, 1999 letter from AT&T to Grand River Mutual Telephone Corp. Co. (attached).

<sup>11</sup> Id.

of revised toll tariffs.”<sup>13</sup> Therefore, unless the state rules in AT&T’s favor on the issue of toll rate deaveraging, customers of rural telephone companies will not have AT&T as a choice for toll service. IXC’s should not be permitted to blackmail state commissions in such a manner.

The Commission is not free to stand by as rural communities are deprived of their carrier of last resort for interstate toll service. Section 214 of the Communications Act provides that “no carrier shall discontinue, reduce, or impair service . . . unless and until there shall first have been obtained from the [Federal Communications] Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”<sup>14</sup> Thus, AT&T, through this letter, is circumventing the Communications Act and the Commission’s rules. It is flatly refusing to provide service in rural Missouri without having obtained proper authority to do so. A certificate regarding the public convenience and necessity of discontinuing service was neither sought, nor obtained.

In commencing this proceeding, the Commission intends to ensure that all customers share in the benefits of regulatory reform. To further that goal, the Commission should include within the scope of its examination a look at how regulatory reforms are affecting the rural customer’s access to and choice of toll carriers.

## **VI. CONCLUSION**

The Commission is right to have concerns that flat-rated charges on low-volume customers may be unduly burdensome. It should not assume that low-volume customers are low-income

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<sup>12</sup> Id.

<sup>13</sup> 47 U.S.C. § 214(a). Section 63.71 of the Rules provides the procedures for obtaining Commission permission.

customers, but should pursue affordable long distance rates for all customers. It should exercise particular care to prevent flat charges from being used to shift more costs into rural areas where customers may not have the ability of urban customers to avoid low volume charges by dialing around a carrier that imposes them or by targeting rate reductions and optional calling plans to high volume and non-rural customers. Nor should the Commission shift the duty of collecting the PICC costs caused by interexchange providers onto local exchange providers, thus effectively removing the SLC cap and imposing PICC pass throughs on rural carriers when the Commission has not yet decided to apply PICCs to non-price cap telephone companies. And the Commission should ensure that no carrier can withdraw or threaten to withdraw long distance service as a tool to secure the ability to deaverage toll rates in spite of the rural-urban toll averaging mandate.

Respectfully submitted,

**THE RURAL TELEPHONE COALITION**

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July 1, 1999

P.O. Box 6742  
280  
Som

Grand River Mutual Telephone Corp. Co.  
Paul Smith, Equal Access Coordinator  
1001 Kentucky Street  
Princeton, MO 64673

Dear Mr. Smith:

This is to notify you of AT&T's intentions concerning participation in the upcoming intraLATA equal access conversion for your company in the State of Missouri. Since AT&T does not normally issue an Access Service Request (ASR) for intraLATA-only equal access conversions, this letter will serve as an official notification to your company.

Please do not open the AT&T access codes of 0288 and 0732 for intraLATA 1+ toll service in your company's Missouri exchanges. Because AT&T has decided not to participate in your company's intraLATA 1+ toll market at this time, AT&T will not pay any originating access charges to your company for 0288 and 0732 intraLATA 1+ toll traffic. AT&T will continue to pay terminating access charges to your company for applicable interLATA and intraLATA traffic, as well as originating access charges for interLATA traffic.

AT&T requests that representatives of your company refrain from taking any intraLATA 1+ orders for AT&T from your local customers. Further, AT&T declines to be included on any ballot, notice or list as a carrier available for selection as an intraLATA and/or interLATA 1+ service provider in your company's exchanges. If AT&T is currently included as an interLATA carrier available to new customers on your company's business office list, please remove it as soon as possible.

AT&T requests that your company continue the provisioning of AT&T carrier identification codes required for the origination of dial-around (101XXXX) intrastate interLATA and intraLATA calls, as you do today. AT&T will continue to pay your company originating access charges for intraLATA and interLATA dial-around traffic.

In essence, AT&T is requesting that your company retain the status quo in regard to how AT&T toll traffic is being handled currently; whereas interLATA 1+ and interLATA and intraLATA dial-around toll traffic is permitted, and intraLATA 1+ toll traffic is not. AT&T is eager to serve your company's intraLATA 1+ toll market when it can do so in an economical manner. To that end, AT&T will seek to be available to serve that market by October 20, 1999, contingent upon regulatory approval of revised toll tariffs.

Should you have any questions, please don't hesitate to call me on 732-805-1095.

A handwritten signature in cursive script that reads "Fran Gramiccioni".

Fran Gramiccioni  
AT&T Equal Access Coordinator